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CLERK U S DISTRICT COURT	
DISTRICT OF ARIZONA	
BY	DEPUTY

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

United States of America,  
  
Plaintiff,  
  
vs.

No. CR-20-106-PHX-MHB

**PLEA AGREEMENT**

Michael Francis Weinberger,  
  
Defendant.

Plaintiff, United States of America, and the defendant, Michael Francis Weinberger, hereby agree to dispose of this matter on the following terms and conditions:

**1. PLEA**

The defendant will plead guilty to an Information charging the defendant with a violation of 18 United States Code (U.S.C.) § 1163, Theft from Indian Tribal Organizations, a Class A misdemeanor offense.

**2. MAXIMUM PENALTIES**

a. A violation of 18 U.S.C. § 1163, is punishable by a maximum fine of \$100,000, a maximum term of imprisonment of one year, or both, and a term of supervised release of up to one year. A maximum term of probation is five years.

b. According to the Sentencing Guidelines issued pursuant to the Sentencing Reform Act of 1984, the Court shall order the defendant to:

1 (1) make restitution to any victim of the offense pursuant to 18 U.S.C.  
2 § 3663 and/or 3663A, unless the Court determines that restitution would not be  
3 appropriate;

4 (2) pay a fine pursuant to 18 U.S.C. § 3572, unless the Court finds that a  
5 fine is not appropriate;

6 (3) serve a term of supervised release when required by statute or when a  
7 sentence of imprisonment of more than one year is imposed (with the understanding that  
8 the Court may impose a term of supervised release in all other cases); and

9 (4) pay upon conviction a \$25 special assessment for each count to which  
10 the defendant pleads guilty pursuant to 18 U.S.C. § 3013.

11 c. The Court is required to consider the Sentencing Guidelines in determining  
12 the defendant's sentence. However, the Sentencing Guidelines are advisory, and the Court  
13 is free to exercise its discretion to impose any reasonable sentence up to the maximum set  
14 by statute for the crime(s) of conviction, unless there are stipulations to the contrary that  
15 the Court accepts.

16 **3. STIPULATIONS REGARDING SENTENCING**

17 Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the defendant  
18 stipulate that:

19 a. Sentence. Defendant shall be sentenced to a term of probation.

20 b. Restitution. Pursuant to 18 U.S.C. § 3663 and/or 3663A, the defendant  
21 specifically agrees to pay full restitution in the amount of \$8,053.25, to all victims directly  
22 or proximately harmed by the defendant's "relevant conduct," including conduct pertaining  
23 to any dismissed counts or uncharged conduct, as defined by U.S.S.G. § 1B1.3, regardless  
24 of whether such conduct constitutes an "offense" under 18 U.S.C. §§ 2259, 3663 or 3663A.  
25 The defendant understands that such restitution will be included in the Court's Order of  
26 Judgment and that an unanticipated restitution amount will not serve as grounds to  
27 withdraw the defendant's guilty plea or to withdraw from this plea agreement.

28 c. Assets and Financial Responsibility. The defendant shall make a full

1 accounting of all assets in which the defendant has any legal or equitable interest. The  
2 defendant shall not (and shall not aid or abet any other party to) sell, hide, waste, spend, or  
3 transfer any such assets or property before sentencing, without the prior approval of the  
4 United States (provided, however, that no prior approval will be required for routine, day-  
5 to-day expenditures). The defendant also expressly authorizes the United States Attorney's  
6 Office to immediately obtain a credit report as to the defendant in order to evaluate the  
7 defendant's ability to satisfy any financial obligation imposed by the Court. The defendant  
8 also shall make full disclosure of all current and projected assets to the U.S. Probation  
9 Office immediately and prior to the termination of the defendant's probation, such  
10 disclosures to be shared with the U.S. Attorney's Office, including the Financial Litigation  
11 Unit, for any purpose.

12 **4. RECOMMENDATIONS REGARDING SENTENCING**

13 a. Acceptance of Responsibility. If the defendant makes full and complete  
14 disclosure to the U.S. Probation Office of the circumstances surrounding the defendant's  
15 commission of the offense, and if the defendant demonstrates an acceptance of  
16 responsibility for this offense up to and including the time of sentencing, the United States  
17 will recommend a two-level reduction in the applicable Sentencing Guidelines offense  
18 level pursuant to U.S.S.G. § 3E1.1(a). If the defendant has an offense level of 16 or more,  
19 the United States will move the Court for an additional one-level reduction in the applicable  
20 Sentencing Guidelines offense level pursuant to U.S.S.G. § 3E1.1(b).

21 b. Non-Binding Recommendations. The defendant understands that  
22 recommendations are not binding on the Court. The defendant further understands that the  
23 defendant will not be permitted to withdraw the guilty plea if the Court does not follow a  
24 recommendation.

25 **5. AGREEMENT TO DISMISS OR NOT TO PROSECUTE**

26 a. This office shall not prosecute the defendant for any offenses committed by  
27 the defendant, and known by the United States, in connection with Defendant's conduct on  
28 June 20, 2017, at the Talking Stick Resort and Casino.

1           b.     This agreement does not, in any manner, restrict the actions of the United  
2 States in any other district or bind any other United States Attorney's Office.

3     **6.     COURT APPROVAL REQUIRED; REINSTITUTION OF PROSECUTION**

4           a.     If the Court, after reviewing this plea agreement, concludes that any  
5 provision contained herein is inappropriate, it may reject the plea agreement and give the  
6 defendant the opportunity to withdraw the guilty plea in accordance with Fed. R. Crim. P.  
7 11(c)(5).

8           b.     If the defendant's guilty plea or plea agreement is rejected, withdrawn,  
9 vacated, or reversed at any time, this agreement shall be null and void, the United States  
10 shall be free to prosecute the defendant for all crimes of which it then has knowledge and  
11 any charges that have been dismissed because of this plea agreement shall automatically  
12 be reinstated. In such event, the defendant waives any and all objections, motions, and  
13 defenses based upon the Statute of Limitations, the Speedy Trial Act, or constitutional  
14 restrictions in bringing later charges or proceedings. The defendant understands that any  
15 statements made at the time of the defendant's change of plea or sentencing may be used  
16 against the defendant in any subsequent hearing, trial, or proceeding subject to the  
17 limitations of Fed. R. Evid. 410.

18     **7.     WAIVER OF DEFENSES AND APPEAL RIGHTS**

19           The defendant waives (1) any and all motions, defenses, probable cause  
20 determinations, and objections that the defendant could assert to the indictment or  
21 information; and (2) any right to file an appeal, any collateral attack, and any other writ or  
22 motion that challenges the conviction, an order of restitution or forfeiture, the entry of  
23 judgment against the defendant, or any aspect of the defendant's sentence, including the  
24 manner in which the sentence is determined, including but not limited to any appeals under  
25 18 U.S.C. § 3742 (sentencing appeals) and motions under 28 U.S.C. §§ 2241 and 2255  
26 (habeas petitions), and any right to file a motion for modification of sentence, including  
27 under 18 U.S.C. § 3582(c). This waiver shall result in the dismissal of any appeal,  
28 collateral attack, or other motion the defendant might file challenging the conviction, order

1 of restitution or forfeiture, or sentence in this case. This waiver shall not be construed to  
2 bar an otherwise-preserved claim of ineffective assistance of counsel or of "prosecutorial  
3 misconduct" (as that term is defined by Section II.B of Ariz. Ethics Op. 15-01 (2015)).

4 **8. DISCLOSURE OF INFORMATION**

5 a. The United States retains the unrestricted right to provide information and  
6 make any and all statements it deems appropriate to the U.S. Probation Office and to the  
7 Court in connection with the case.

8 b. Any information, statements, documents, and evidence that the defendant  
9 provides to the United States pursuant to this agreement may be used against the defendant  
10 at any time.

11 c. The defendant shall cooperate fully with the U.S. Probation Office. Such  
12 cooperation shall include providing complete and truthful responses to questions posed by  
13 the U.S. Probation Office including, but not limited to, questions relating to:

- 14 (1) criminal convictions, history of drug abuse, and mental illness; and  
15 (2) financial information, including present financial assets or liabilities  
16 that relate to the ability of the defendant to pay a fine or restitution.

17 **9. FORFEITURE, CIVIL, AND ADMINISTRATIVE PROCEEDINGS**

18 Nothing in this agreement shall be construed to protect the defendant from  
19 administrative or civil forfeiture proceedings or prohibit the United States from proceeding  
20 with and/or initiating an action for civil forfeiture. Pursuant to 18 U.S.C. § 3613, all  
21 monetary penalties, including restitution imposed by the Court, shall be due immediately  
22 upon judgment, shall be subject to immediate enforcement by the United States, and shall  
23 be submitted to the Treasury Offset Program so that any federal payment or transfer of  
24 returned property the defendant receives may be offset and applied to federal debts (which  
25 offset will not affect the periodic payment schedule). If the Court imposes a schedule of  
26 payments, the schedule of payments shall be merely a schedule of minimum payments and  
27 shall not be a limitation on the methods available to the United States to enforce the  
28 judgment.

1     **10.     ELEMENTS**

2                     **Embezzlement and Theft from Indian Tribal Organizations**

3             On or about June 20, 2017, in the District of Arizona:

- 4             1.     Defendant knowingly converted to his use or the use of another,  
5             2.     Goods, assets, or other property valued at \$1,000 or less, that  
6             4.     Belonged to an Indian tribal organization or had been entrusted to the custody  
7                     or care of any officer, employee, or agent of an Indian tribal organization.

8     **11.     FACTUAL BASIS**

9             The defendant admits that the following facts are true and that if this matter were to  
10            proceed to trial the United States could prove the following facts beyond a reasonable  
11            doubt:

12            On June 20, 2017, at the Talking Stick Resort and Casino, located within the  
13            boundaries of the Salt River Pima Maricopa Indian Community, Maricopa  
14            County, Defendant purposefully pulled down a display case that resulted in  
15            the destruction of the case and the Indian artifacts within the case. The  
16            cultural display case was located in the lobby of the Talking Stick Resort and  
              Casino. The value of one of the Indian artifacts that was destroyed by  
              Defendant was \$675.

17            The defendant shall swear under oath to the accuracy of this statement and, if the  
18            defendant should be called upon to testify about this matter in the future, any intentional  
19            material inconsistencies in the defendant's testimony may subject the defendant to  
20            additional penalties for perjury or false swearing, which may be enforced by the United  
21            States under this agreement.

22                     **APPROVAL AND ACCEPTANCE OF THE DEFENDANT**

23            I have read the entire plea agreement with the assistance of my attorney. I  
24            understand each of its provisions and I voluntarily agree to it.

25            I have discussed the case and my constitutional and other rights with my attorney.  
26            I understand that by entering my plea of guilty I shall waive my rights to plead not guilty,  
27            to trial by jury, to confront, cross-examine, and compel the attendance of witnesses, to  
28            present evidence in my defense, to remain silent and refuse to be a witness against myself

1 by asserting my privilege against self-incrimination, all with the assistance of counsel, and  
2 to be presumed innocent until proven guilty beyond a reasonable doubt.

3 I agree to enter my guilty plea as indicated above on the terms and conditions set  
4 forth in this agreement.

5 I have been advised by my attorney of the nature of the charges to which I am  
6 entering my guilty plea. I have further been advised by my attorney of the nature and range  
7 of the possible sentence and that my ultimate sentence shall be determined by the Court  
8 after consideration of the advisory Sentencing Guidelines.

9 My guilty plea is not the result of force, threats, assurances, or promises, other than  
10 the promises contained in this agreement. I voluntarily agree to the provisions of this  
11 agreement and I agree to be bound according to its provisions.

12 I understand that if I am granted probation or placed on supervised release by the  
13 Court, the terms and conditions of such probation/supervised release are subject to  
14 modification at any time. I further understand that if I violate any of the conditions of my  
15 probation/supervised release, my probation/supervised release may be revoked and upon  
16 such revocation, notwithstanding any other provision of this agreement, I may be required  
17 to serve a term of imprisonment or my sentence otherwise may be altered.

18 This written plea agreement, and any written addenda filed as attachments to this  
19 plea agreement, contain all the terms and conditions of the plea. Any additional  
20 agreements, if any such agreements exist, shall be recorded in a separate document and  
21 may be filed with the Court under seal; accordingly, additional agreements, if any, may not  
22 be in the public record.

23 I further agree that promises, including any predictions as to the Sentencing  
24 Guideline range or to any Sentencing Guideline factors that will apply, made by anyone  
25 (including my attorney) that are not contained within this written plea agreement, are null  
26 and void and have no force and effect.

27 I am satisfied that my defense attorney has represented me in a competent manner.  
28

1 I fully understand the terms and conditions of this plea agreement. I am not now  
2 using or under the influence of any drug, medication, liquor, or other intoxicant or  
3 depressant that would impair my ability to fully understand the terms and conditions of this  
4 plea agreement.

5 01/21/2020  
6 Date

Michael F. Weinberger  
MICHAEL FRANCIS WEINBERGER  
Defendant

7  
8 **APPROVAL OF DEFENSE COUNSEL**


9 I have discussed this case and the plea agreement with my client in detail and have  
10 advised the defendant of all matters within the scope of Fed. R. Crim. P. 11, the  
11 constitutional and other rights of an accused, the factual basis for and the nature of the  
12 offense to which the guilty plea will be entered, possible defenses, and the consequences  
13 of the guilty plea including the maximum statutory sentence possible. I have further  
14 discussed the concept of the advisory Sentencing Guidelines with the defendant. No  
15 assurances, promises, or representations have been given to me or to the defendant by the  
16 United States or any of its representatives that are not contained in this written agreement.  
17 I concur in the entry of the plea as indicated above and that the terms and conditions set  
18 forth in this agreement are in the best interests of my client. I agree to make a bona fide  
19 effort to ensure that the guilty plea is entered in accordance with all the requirements of  
20 Fed. R. Crim. P. 11.

21 1/23/2020  
22 Date

MELISSA HO 023269  
Attorney for Defendant

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MICHAEL BAILEY  
United States Attorney  
District of Arizona

  
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ANDREW C. STONE  
Assistant U.S. Attorney

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HONORABLE MICHELLE H. BURNS  
UNITED STATES MAGISTRATE JUDGE